

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 2765 of 2007(D)

PETITIONER:

**MAVARATHALAKONAM N.S.S.KARAYOGAM,
REP.BY ITS SECRETARY, C.SUDHAKARAN NAIR,
VRINDAVAN, MNRA 512, MYTHRI NAGAR, PAROTTUKONAM,
NALANCHIRA P.O., THIRUVANANTHAPURAM.**

BY ADV. SRLS.GOPAKUMARAN NAIR

RESPONDENTS:

**1. MUNICIPAL CORPORATION OF
THIRUVANANTHAPURM, REP.BY ITS SECRETARY,
CRORPORATION OFFICE, PALAYAM, THIRUVANANTHAPURAM.**

**2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**

**ADDL.R3. L.R. GEETHAKUMARI, DEVAKI NIVAS, N.S.S. ROAD, ANAYARA,
TRIVANDRUM.**

**(ADDL.R3 IS IMPEADED AS PER ORDER ON IA NO.9324/07
DATED 9.7.2007.)**

R1 BY ADV. SHRI N. NANDAKUMARA MENON.

R2 BY SR. GOVERNMENT PLEADER (SHRI K. J. MOHAMMED ANZAR)

ADDL.R3 BY ADV. SRLS.MOHANDAS

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. M. JOSEPH, J.

W.P.C. NO. 2765 OF 2007 D

Dated this the 16th August, 2007

JUDGMENT

Petitioner has approached this Court challenging Ext.P4 and seeking a direction to the respondents to exempt the petitioner Karayogam from the Building Rules and to regularise the construction of the petitioner's Community Hall as per Ext.P1 order of exemption. A declaration also is sought that the construction of the petitioner's Community Hall is valid and legal in view of Ext.P1 order of exemption. There is a further direction sought to the first respondent to consider the possibility of regularising the construction of the petitioner's Community Hall in case of deviation, if any, as directed in Ext.P3 order of the Tribunal.

2. Briefly put, the case of the petitioner is as follows:

Petitioner is a Karayogam registered with the NSS. They are engaged in various community, social and philanthropic activities in respect of all the communities in the area,

particularly the Nair community. Ext.P1 is an order of exemption obtained under which the petitioner is exempted from the relevant provisions of the Building Rules, for constructing a Community Hall. The additional third respondent filed a complaint and based on those objections, the Secretary of the Ulloor Grama Panchayat has passed an order of demolition of certain portions of the Community Hall. Since the order was not implemented, the additional third respondent moved this Court and this Court directed the Secretary of the first respondent to take a final decision and Ext.P2 is the consequential order directing demolition of certain portions of the Sunshade, stair case and the roof. Petitioner challenged the order before the Tribunal which pronounced Ext.P3 order and set aside Ext.P2 and directed the Secretary to pass fresh orders evaluating the building based on the provisions of the Kerala Building Rules and the approved plan and rendering an opportunity of hearing to the petitioner and the additional third respondent and considering the possibility of regularisation in case of deviation,

if any. Ext.P4 is the consequential order which is challenged. By Ext.P4, it was found that there was deviation and violation of the provisions of the Building Rules and consequently, direction is made to demolish, rejecting the application.

3. I heard the learned counsel appearing for the parties. Shri S. Gopakumaran Nair, learned counsel appearing for the petitioner contends that Ext.P4 order is unsustainable, as the Tribunal had directed the Secretary to consider the possibility of regularisation. He points out the contents of Ext.P4 to contend that the representative of the petitioner was even ready to pay compounding fee. He points out that the petitioner is rendering service to all communities and it is a charitable organisation and, therefore, the deviations should have been regularised. There is non-application of mind to vital aspects, he contends.

4. Per contra, learned counsel appearing for the respondent Corporation would contend that under Rule 143 of the of the Municipal Building Rules, the Secretary has power to order regularisation only if there is no violation of the Building

Rules and in this case, as it is not in dispute that there is violation of the Building Rules, regularisation is impermissible and, therefore, the order is only to be sustained. The additional third respondent pointed out that this is a case where there is violation of the Building Rules. It is also submitted that being the owner of the adjacent land, she is prejudicially affected by the construction. Stair case is put up over the compound wall, he contends. He raised a complaint also against the roof.

5. As regards the contention of the petitioner that the direction to consider the application for regularisation has not been complied with by the Secretary, I find that this contention is not with merit. Rule 143 of the Kerala Municipality Building Rules reads as follows:

"143. Power of the Secretary to regularise certain constructions.- The Secretary shall have the power to regularise construction or reconstruction or addition or alteration of any building or digging of any well or telecommunication tower or any structure or land development or any work for which permission of

the Secretary is necessary under thus Rule commenced, being carried on or completed without obtaining approved plan or in deviation of the approved plan:

Provided that such construction or reconstruction or addition or alteration of any building or digging of any well shall not be in violation of any of the provisions of the Act or these Rules."

6. Though the learned counsel for the petitioner would submit that the proviso will not apply in respect of construction made in deviation from the plan, I find myself unable to accept the contention. The scheme of regularisation under Rule 143 of the Municipality Building Rules, 1999 is that a construction which is made and which comes under Rule 143 can be regularised only if there is no violation of the Act or the Rules. The scheme is different from the power of regularisation under Section 407 read with the Regularisation of Illegal Construction

Rules, 1999. Under the provision, the Government enjoyed the power. That was a one time affair where the construction was made prior to a particular date and the application was made thereunder before the Government before a particular date. Power under Rule 143 is the power which is available as it stands in respect of constructions made which are not in violation of the Building Rules. Under Rule 143, power is vested with the Secretary. Under Ext.P3 order, the Tribunal remitted back the matter to the Secretary. Therefore, it is clear that the parties understood the power as under Rule 143. If the power is one available under Rule 143, then the power is hedged in with the limitation which is inevitable that it cannot be exercised when there is violation of the Building Rules. In such circumstances, I have no hesitation in rejecting the contention of the petitioner that even if there is violation of the Building Rules, the construction can be regularised under Rule 143.

Having regard to the complaint of the neighbour, I do not think that the petitioner has made out a case for interference. The Writ Petition is dismissed.

K. M. JOSEPH, JUDGE

kbk.